cult point the Crown is not open to any criticism for having taken one of two possible views of the section which had some support from authorities in this country. There was here no injustice beyond what is always suffered by a man who has been convicted. This is not a case in which the Crown have exposed themselves to any criticism. There were not in this case the very special circumstances justifying the award of costs.

E. F. N. Gratiaen Q.C. and *Dick Taverne* for the respondent (appellant in the appeal) were not called upon.

Viscount Radcliffe, giving the judgment of the Board, said: Their Lordships take the view that the petition must be dismissed. It is not, and never has been, an absolute rule that in no case can a successful appellant in a criminal matter before the Board receive costs from the respondent. In this case we do not think that it is necessary to treat the order that the Crown should pay the costs as amounting to any censure or hostile criticism of what has been done, but we cannot ignore the fact that this is not merely a question of a conviction which has gone wrong in the sense that the law has been wrongly applied. It is a case in which the Crown from the first has been involved in these, as the Board has held, illegal proceedings which brought about the charge and the trial itself. In their Lordships' view this is one of those cases in which it would be proper that the Crown should be ordered to pay, as the Board has ordered, the costs of the appellant before the Board.

Gratiaen Q.C. It is submitted that this is a proper case for this person who was the luckless victim, to use your Lordships' phrase, of a misinterpretation which led to six weeks' custody on a charge which was withdrawn, followed by expulsion from a country on an illegal conviction, followed by having to come here again for your Lordships to reconsider the order for costs in the original judgment, to be indemnified in regard to that extra expense as well.

Viscount Radcliffe: Mr. Le Quesne, if you do not succeed on this application we do not see how you can do other than pay those costs.

Petition dismissed.

Solicitors:—*Charles Russell & Co.; T. L. Wilson & Co.*

HANAFIAH v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Hill and Barakbah JJ.A.) April 3, 1963]

[K.L. — F.M. Criminal Appeal No. 5 of 1963]

Criminal law—Murder—Conviction under s. 302 of Penal Code—Defence of provocation—Direction to jury whether killing was murder or less than murder—Whether direction wrong in law—Direction on unanimity or majority of verdict—Whether bad—Intervention by judge in examination of witnesses—Whether sufficient to upset verdict.

Following a conviction for the offence of murder under section 302 of the Penal Code in a case where the killing was not in dispute, the appeal was argued on the following grounds: (1) the direction to the jury contained the statement that the issue before them was whether the killing was murder or whether it was something less than murder; (2) the direction had contained the statement: "I would like you to agree on a verdict, for otherwise I will have to order a retrial which would cause expense to all concerned"; (3) the judge had intervened on several occasions to question witnesses when he should not have done so.

Held: (1) because there was never at any time a suggestion from the defence that the appellant was not guilty of any offence whatsoever, the direction that the issue was whether the killing was murder or something less than murder was not only a correct but also a desirable direction;

(2) the second direction complained of imported no threat of inconvenience or misfortune to the jury themselves and was therefore inoffensive in law;

(3) the intervention of the judge in the examination of witnesses did not exceed what is properly permitted to a judge for his own benefit and the benefit of the jury.

Case referred to:—

(1) *Seneviratne* v. *R.* [1936] 3 All E.R. 36.

COURT OF APPEAL (CRIMINAL).

Y. S. Lee for the appellant.

Wan Hamzah (Deputy Public Prosecutor) for the respondent.

Thomson C.J. (delivering oral judgment): This appellant was convicted in the High Court at Kedah for murder in contravention of section 302 of the Penal Code. The charge against him was that on the morning of 3rd May, 1961, on a rubber estate near Kuala Muda he murdered his step-daughter named Bashah binti Nayan.

It has never been in question, and indeed at the trial it was proved up to the hilt, that the deceased woman died as a result of having a very heavy implement of the type known as a "golok" inserted several times into her person by the appellant. On at least two occasions the "golok" penetrated into the lungs causing the fatal injuries.

The background of the case was that there was a great deal of evidence that the prisoner was, to put it at the lowest, suspected of having a guilty relationship with the deceased woman who was much more younger than himself. It was the prosecution case that on the day in question he had sought her out for some improper purposes.

It was the defence that on the day in question he had come to where the woman was as it were by accident while he was searching for timber, that there had been words between them, that she used bad language towards him and slapped his face and stooped down as if to pick up something. In the light of his past unhappy

days when he had been more or less openly accused of molesting her and had, so he said, been shunned and avoided by his neighbours during the Hari Raya celebrations, this action deprived him of his powers of self-control and while so deprived he struck at her with the weapon which happened to be in his hand.

The case was put to the jury, in our view, correctly and adequately. They were directed as to the nature and incidence of the evidence and they were correctly directed as to the law, particularly on the point of provocation.

It is said that the summing-up was defective for a number of reasons which, in our view, are without substance.

It is said that in the first place the Judge created a wrong impression in the minds of the jury by telling them, as he did, that the issue before them was whether the killing was murder or whether it was something less than murder and that a verdict of not guilty of any offence would be unreasonable. In our view not only was that a correct direction but it was a desirable direction which was calculated to concentrate the minds of the jury on the real question in issue because there was never at any time any suggestion from the defence that the appellant was not guilty of any offence whatsoever.

In our view it was wise and proper for the Judge, as is frequently done, to direct the jury to the true nature of the question before them.

Then it was said, and in this connection our attention was invited to the case of *Seneviratne* v. *R.*,[1] that the Judge went too far when he said this to the jury:—

> "I would like to remind you that your verdict should be unanimous or by a majority of 6—1 or 5—2."

As far as that goes that is a statement of the law because anything less than that would not be a verdict. Then he went on:—

> "I would like you to agree on a verdict, for otherwise I will have to order a retrial which could cause expense to all concerned."

That is a bare statement of fact and it is vitally different from what was said to the jury in *Seneviratne's* case where the Judge's observations were the subject of criticisms of the Privy Council.

What the Judge said to the jury in that case, after pointing out what was a verdict and what was not a verdict, was: "That means you have to go through the trial again. I hope you will not have this misfortune." In other words in *Seneviratne's* case he pointed out that a division of opinion among the jury would bring inconvenience and misfortune to themselves. That, of course, was going very far than the Judge went in this case.

Again it was said that the Judge intervened on several occasions to question witnesses when he should not have done so. It is, of course, axiomatic that the less a Judge interferes in the examination of a witness, which after all is the duty of counsel, the better. On the other hand it is equally clear that if at the conclusion of a witness' evidence the Judge has any doubt in his mind as to what has been said or as to the intention of the words used he is perfectly entitled to put such questions to the witness for his own benefit and for the benefit of the jury.

What is wrong is when a Judge takes the examination of a witness entirely out of the hands of counsel and there was nothing of that sort here. There were two or three interventions and in our opinion none of these could have in any way affected the minds of the jury by conveying to them any opinion on the part of the Judge in favour of a verdict of murder as against the verdict of culpable homicide not amounting to murder.

We have listened to a long and exhaustive criticism of the prosecution case directed to make out that the appellant was not guilty of murder. But the question of guilty or not guilty was a question for the jury, it is not a question for us, and we know of no authority that would entitle us to interfere with the verdict of a jury which has been arrived at after a proper and adequate direction by the trial Judge.

In all the circumstances of the case we are bound to say that the appeal is dismissed.

Appeal dismissed.

Solicitors:—*Y. S. Lee & Co.*

HAMSA KUNJU v. REGINA

[A.Cr.J. (Buttrose J.) April 29, 1963]

[Singapore — Magistrate's Appeal No. 207 of 1962]

Evidence—Admission of —No objection raised at trial—Whether can be raised on appeal—Character evidence or res gestae.

The appellant was convicted on three charges of causing hurt and grievous hurt by a dangerous weapon and was sentenced to various sentences which were to run concurrently. The learned District Judge found as a fact that the appellant without provocation and without acting in self-defence committed the offences with which he was charged.

It was argued for the appellant that the learned District Judge had erred in law in admitting certain evidence, particularly with reference to an alleged incident at the Delta Road work-site on the morning of March 21, 1962. The assaults which formed the subject